

Application No.: 10/042,473

respectfully contends that the "reservoir" term used in the claim has been present for several actions, and that the immediately preceding amendments were simply further clarifying the previously added recitation of a "non-pressurized liquid reservoir" in place of what was recited as a "liquid source." Moreover, the "new" rejection was previously traversed and was withdrawn by the Examiner in the Office Action of February 28, 2005. As no new limitations were added by the previous amendment ("liquid reservoir" having replaced "liquid source" in a prior amendment), Applicant fails to understand what basis the Examiner relies upon to support the conclusion that the amendment necessitated the "new" ground for rejection. In fact, the amendment simply overcomes the previous 35 USC §112 rejection as has been acknowledged by the Examiner in the present action.

Rather, it appears that Applicants' argument overcame the prior art rejection, and necessitated the Examiner's assertion of the "new" (reasserted) ground for rejection. In particular, Applicants previously urged that "one skilled in the art would know that a reservoir (see also ¶[0023]) has no capacity to hold pressure. As used in the instant application the term reservoir clearly includes an open-air storage area or a receptacle or part of a machine designed to hold fluid ...." In view of the fact that the rejections have only now been revised and relied upon in the current Office Action, Applicants respectfully urge that the finality of this Action is premature, and further request that the holding of finality be withdrawn so that Applicants may be permitted to submit a further response and/or claim amendments as of right.

Applicants further submit that the current rejection also fails to set forth the basis for rejection of various dependent claims depending from claim 1 (claims 2 – 7, 10-24 and 26-32). For example, the recited pumping system of claim 4, capable of recirculating the liquid being ozonated, has not been identified as being taught in the '773 patent. Similarly, claim 12 recites a flow valve as controlling the rate of output flow from a dispensing tip. Again, such a limitation is not discussed in the present rejection so as to enable Applicants to respond thereto. Absent such information, the rejection is respectfully urged to fail to establish *prima facie* obviouness and to be premature.

#### **REMARKS**

The Office Action of August 11, 2005, has been carefully considered. The rejections are traversed and reconsideration of this application, and allowance thereof, is respectfully requested. No new claim amendments are submitted with this response.

Application No.: 10/042,473

Turning now, to the office action, Applicants' amendment of May 31, 2005 was acknowledged as overcoming the rejection under 35 USC §112, first paragraph, and the rejection under 35 USC §103(a) over Burris '773 in view of Burris '993.

In the present Office Action claims 1 – 7, 10 – 24 and 26 – 32 were “newly” rejected under 35 USC §102(b) as being anticipated by Burris '773. Claim 8 was rejected over Burris '773 in view of Burris (5,422,043) or Burris (5,858,283).

*I. Claims 1 – 7, 10 – 24 and 26 – 32 rejected under 35 USC §102(b) as being anticipated by Burris '773*

Considering the rejection of claims 1 – 7, 10 – 24 and 26 – 32 under 35 USC §102(b) as being anticipated by Burris '773, Applicants respectfully traverse the rejection. Burris '773 is cited as teaching a liquid treatment system comprising an untreated liquid source. The referenced system of Burris '773, for example Fig. 4, requires supply pressure (col. 2 line 66 in conjunction with col. 5, lines 4-10 and col. 5, lines 65-66) to output treated liquid; the inlet liquid displaces liquid within the treatment system in order to cause an output of treated liquid (col. 5, lines 67-68 in conjunction with col. 5, lines 29-35). Moreover, the '773 “outputs treated liquid on demand by the opening of valve 14.” (col. 3, lines 2-5). The Examiner has urged that such a “manually demand switch” is taught in Fig. 4 of the '773, yet the '773 patent indicates that the system of Fig. 4 is similar to system 50 of FIG. 3, in using treatment chamber 48 and treated liquid output via manual demand switch 44.

Conversely, claim 1 expressly recites a “controllable delivery system to direct the liquid containing dissolved ozone to the point of use, where a rate of flow through the controllable delivery system is adjusted by the user.” The liquid containing dissolved ozone is an important aspect of the present invention as water containing dissolved ozone “is a potent oxidizer and germ killer. The dissolved ozone can reduce or eliminate gingivitis, gum bleeding, bad breath, teeth stains, and harmful oral bacteria. As well as cleaning teeth and refreshing the mouth, this inexpensive and easy to use small appliance can save users unpleasant and costly dental treatments and make them more attractive with whiter teeth and sweet breath. (¶[0004]). As the '773 patent does not set forth such a limitation, it cannot anticipate liquid containing dissolved ozone, or control of flow rate, as presently recited in claim 1.

It appears that the “manual demand switch” of the '773 patent has also been identified as the control means for the rate of flow of liquid containing ozone.

Application No.: 10/042,473

However, what has not been identified is how the '773 patent assures that the liquid delivered thereto has dissolved ozone in it ('773 recites delivery of treated liquid, not of liquid containing dissolved ozone). In fact, '773 does not have the configuration required to deliver the liquid containing dissolved ozone as the instant invention (see e.g., ¶[0022]).

As noted above with respect to the argument that the final rejection is premature, and as further noted below, several dependent claims are also not indicated as having been taught by the '773 patent and/or are entirely incompatible with the operation of the '773 invention.

With respect to claim 10, no teaching of the generation of more ozone than can be dissolved is found in '773. Accordingly, the limitations of claim 10 are not anticipated by '773. A similar limitation is found in claim 11, and again absent a reference to a particular teaching of the dissolved ozone concentration being determined by the solubility of ozone in the liquid, no rejection can stand.

Claim 12 further defines the manner in which the flow of ozonated liquid is controlled through a dispensing tip – use of a valve to control flow. Here again, the Examiner has not indicated where such a limitation is found in '773. Thus, the claim cannot be anticipated and must be indicated as allowable or a suitable rejection set forth.

In claims 15 – 17, specific limitations are directed to a pulsation of the liquid and Applicants respectfully urge that no such limitation has been identified in support of the rejection of such claims. Moreover, because the term “pulsate” or “pulsation” is not found in '773, the patent cannot support a rejection of claims 15-17 under §102. Accordingly, claims 15 – 17 are presently believed to be in condition for allowance, and an indication thereof is respectfully requested.

With respect to claim 23 (also dependent from claim 1), the use of a removable reservoir (i.e., un-pressurized) would result in the '773 device over-filling without ever outputting the intended treated liquid. In the various embodiments of Burris '773, the apparatus is attached to an external pressurized liquid source (col. 1, lines 37-38), there are no provisions for a supply side reservoir. The reservoirs 13 referred to in the various embodiments of '773 are treated-liquid reservoirs (col. 3, lines 2-3 & col. 5, lines 14-15). On the other hand, the system of the present invention must output liquid containing dissolved ozone in order to fulfill the requirements of the claimed invention (previously amended claim 1). Thus, claim 23 further recites a removable

Application No.: 10/042,473

reservoir, and as such a structure is not taught or suggested by the '773 patent, the claimed invention is unanticipated by the '773 patent.

Insofar as claims 2 – 7, 10 – 24 and 26 - 32, inclusive, are concerned, these claims all depend from now presumably allowable claim 1 and are also believed to be in allowable condition for the reasons hereinbefore discussed with regard to claim 1.

*II. Claim 8 was rejected over Burris '773 in view of Burris (5,422,043) or Burris (5,858,283).*

Turning to the rejection under 35 U.S.C. §103(a), Applicants respectfully incorporate the arguments above in traversal of the rejection of claim 1 from which claim 8 depends. The Examiner has acknowledged that '773 does not teach the use of a diffuser. In fact, '773 teaches the use of a venturi 21 or pump 25 (or inline mixer 19) to combine and mix the ozone gas and liquid.

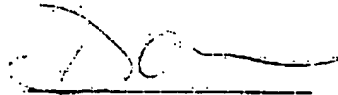
Conversely, claim 8 is directed to a "device ... where the ozone containing gas is pumped by a gas pump through a diffuser into the liquid." The Examiner has indicated that a diffuser is not taught by '773. The Examiner then cites two patents in which the Applicant(s) have taught an ozone diffuser. However, the Examiner has set forth no basis within the references themselves, that would suggest such a modification of the '773 patent to add the recited element. Furthermore, several embodiments set forth in '773 do not expressly indicate a pressurized source of ozone gas – leading to the conclusion that one of skill in the art would not have been motivated to combine/modify '773, as to do so would require a pressurized gas source to pass ozone gas into the liquid. Here again, it appears that the present application has been employed as the "recipe" by which different components from several patents have been selected to create the claimed invention. Absent reference to the specific teaching relied upon, this rejection fails to establish *prima facie* obviousness to which Applicant can or should respond. Accordingly, Applicants again respectfully request that the rejection be withdrawn and the subject matter of claim 8 be indicated as allowable in a subsequent communication.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

Application No.: 10/042,473

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,



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